SINGAPORE REPORTS

Public Prosecutor v Chot Saik Kam

HIGH COURT (SINGAPORE) — CRIMINAL CASE NO 7 OF 1989
COOMARASWAMY J
27 AUGUST 1990

Criminal Law — Attempt to commit culpable homicide — Scope of s 308 of Penal Code — States of mind required under s 304 — Penal Code (Cap 224, 1985 Ed), ss 304 & 308

Criminal Procedure — Sentencing — Culpable homicide not amounting to murder — Accused pleading guilty — Accused suffering from depression — Brutality of act — Penal Code (Cap 224, 1985 Ed), s 304

Criminal Procedure — Sentencing — Attempt to commit culpable homicide not amounting to murder — Accused pleading guilty — State of mind of accused — Intention — Penal Code (Cap 224, 1985 Ed), ss 304 & 308

Criminal Procedure — Sentencing — Consecutive sentences — Totality of sentences — Penal Code (Cap 224, 1985 Ed), s 71

Words and Phrases — 'Another' — Penal Code (Cap 224, 1985 Ed), s 71 illustrations (a) & (b)

The accused pleaded guilty to a charge of culpable homicide not amounting to murder of Poon Yit Fong ('Poon') and of stabbing Cheong Siew Foong ('Cheong') with the intention of murder. One night, Poon and Cheong were watching a video in their room when the accused returned and turned on the television in the hall. Poon was irritated by the volume. She spoke to the accused in the hall and returned to her room. Suddenly the accused entered the room and attacked Poon and Cheong with a knife. Cheong received stab wounds on her shoulder, chest and back as well as superficial cuts on her fingers and forearm. She also had a fractured skull. Poon had multiple injuries. The accused was diagnosed as suffering from depression not amounting to unsoundness of mind. But it was an abnormality of mind which had substantially impaired his mental responsibility. He was fit to stand trial and fit to plead.

Held, sentencing the accused to two terms of imprisonment, to run consecutively, and caning:

(1) The nature of the injuries shows the brutal nature of the killing and the intention of the accused. The accused had time to think before he attacked the victims. These factors justified a term of imprisonment for life. But because of his state of depression he was sentenced to ten years' imprisonment.

(2) Because of the violence involved, an additional six strokes of the cane were warranted.

(3) Each paragraph of s 304 refers to different and distinct states of mind. The accused did not have the intention to cause death or injuries likely to cause death. Based on this he was sentenced to three years' imprisonment.

(4) When there was more than one victim from offences forming part of one transaction, the accused was liable to a punishment for each offence. These must be separate and distinct and means that the sentences must be consecutive.

(5) The ultimate guiding principle for sentences was the totality of sentences. The totality of the sentences was appropriate to the facts.

[*Editorial Note*: The accused has appealed to the Court of Criminal Appeal vide Criminal Appeal No 12 of 1990.]

Case referred to
1 *PP* v *Teo Heng Chye* [1989] 3 MLJ 205 (folld)

Legislation referred to
Penal Code (Cap 224, 1985 Ed) ss 71, 308

Ismail Hamid (Dy Senior State Counsel) for the Public Prosecutor.
Peter Fernando for the accused.

Cur Adv Vult

Coomaraswamy J: On 30 July 1990, on his pleas of guilty, I sentenced the accused, Chot Saik Kam, to ten years' imprisonment and six strokes of the cane on an amended first charge and three years' imprisonment on an amended second charge. I ordered the terms of imprisonment to run consecutively from the date of arrest, ie 24 January 1988. The accused now appeals against the sentences. The accused was represented by counsel.

The amended first charge reads:

> You, Chot Saik Kam, are charged that on or about the 24th day of January 1988 at about 9.20pm at Block 341 Jurong East Avenue 1 #04-1508, Singapore, committed culpable homicide not amounting to murder by causing the death of one Poon Yit Fong, and you have thereby committed an offence punishable under section 304(a) of the Penal Code (Cap 224).

The amended second charge reads:

> You, Chot Saik Kam, are charged that on or about the 24th day of January 1988, at about 9.20pm at Block 341 Jurong East Avenue 1 #04-1508, Singapore, did an act, namely, by using a knife to repeatedly stab one Cheong Siew Foong, with such intention and under such circumstances that if by that act you had caused the death of the said Cheong Siew Foong, you would have been guilty of culpable homicide not amounting to murder, and you have thereby committed an offence punishable under section 308 of the Penal Code (Cap 224).

Facts

The deceased ('Poon') was 30 years old, a female Malaysian. She was a waitress. The victim ('Cheong'), aged 23, was also a waitress and a female Malaysian. They were room-mates and worked at the same restaurant.

The accused is a male Malaysian, aged 27. He worked as a machine operator. He rented one of the rooms in the flat where Poon and Cheong were staying.

Poon and Cheong were watching a Chinese video film in their room. Cheong overheard the sound of the main door of the flat being opened. The television set in

the hall was switched on and the volume was very loud. Poon was irritated by the loudness and went to the hall. If it was the accused who had come home, she had a message to pass him to call a Francis Tan, the employer at the restaurant she worked.

Cheong could not hear what was spoken in the hall between Poon and the accused even though the door of the room was not closed. Poon came back to the room and asked Cheong to write down the telephone number of their restaurant. With that, Poon left the room.

Poon came back to continue watching the video film. She complained to Cheong that the accused did not heed her advice to reduce the volume of the television set.

Later, the accused shouted for Poon. She answered. The door was flung open and the accused, clad in his underwear, holding a knife in his right hand was there. Poon and Cheong became hysterical and screamed. The accused attacked Poon and Cheong in turn with the knife.

Poon ran out of the room when Cheong was attacked. The accused then stopped and also ran out of the room. When Cheong followed, the accused was in the hall. When he went for her again, Cheong returned to the room and locked herself up. She nursed her wounds while in the room.

Cheong shouted for help. She then heard the main door being slammed. After some time, she decided to open the door of the room to seek help. When she came out, she saw Poon lying in a pool of blood. She slipped and fell. Lying near Poon's head, she saw a long knife which was one of the two knives kept in the kitchen of the flat. She managed to leave the flat and approached a neighbour who called the police.

Cheong sustained three stabs wounds on her shoulder, chest and back. Her skull was fractured. She also had superficial incisions on her index finger, forearm and thumb. There was a 6cm incision on her right armpit. This wound required surgery lasting nearly five hours. She still had 'persistent right wrist drop, positive pointing finger sign and hand anaesthesia; requiring long-term management'.

Poon suffered multiple injuries on her body. She died from massive haemorrhage due to an incised wound of the neck.

According to a government psychiatrist, the accused was suffering from depression at the time of the offences. This condition did not amount to unsoundness of mind. It was an abnormality of mind which had substantially impaired his mental responsibilities for his acts and omissions in causing the death of Poon.

The accused was found fit to stand trial and to plead to the charges. He pleaded guilty to both amended charges. He admitted the facts as stated by the learned deputy public prosecutor. He understood the nature and consequences of his pleas of guilty. I accordingly convicted him of the charges he faced. The accused had no previous conviction.

Mitigation

A Malaysian, the accused came to Singapore on a work permit. On the day of his offences, the accused visited an amusement park where he consumed some beer. He went back to the flat where Poon and Cheong also stayed.

Counsel for the accused related the circumstances leading to the commission of the offences, in particular Poon's remark 'if you had no money, why rent the room' provoked him. He was arrested while seated on the parapet wall with his feet dangling outside. This was on the 12th floor of the block of flats where he stayed.

He experienced a traumatic childhood. His father was harsh, irresponsible, often drunk and used to assault members of the family.

The accused was of good character. He married shortly before coming to Singapore and had hopes of working in Australia.

His feelings were sorrow and deep regret for the victims and their families. Counsel urged me to order concurrent sentences of imprisonment for the two convictions.

Sentences

In deciding on sentences, I took all the relevant factors into consideration. Among these was the medical report of the psychiatrist on the accused, including the depression he was suffering at the time of the offences. As against this, the two persons on whom he inflicted injuries were two unarmed and helpless women alone in a flat, undoubtedly surprised by his approach with a kitchen knife and with no capacity for retaliation, let alone self-defence.

His counsel described Poon's remark as having provoked the accused. He certainly could not have used the word 'provoke' in the sense the cognate word is used in 'grave and sudden provocation'. In any event, no matter what the extent of the irritation caused by the remark was, no one can say that the remark was sufficient to make the accused inflict the injuries he did. Their full nature will appear hereafter.

As far as the amended first charge is concerned, by his plea of guilt in relation to Poon, the accused admit-

ted what he did was done 'with the intention of causing death, or of causing such bodily injury as is likely to cause death' (s 304(a)). Apart from his plea, this is clear when one examines the injuries suffered by Poon. They were:

(a) Small bruise measuring 2.5 × 0.4cm at the left side of the jaw.
(b) Deep incised wound measuring 7.5cm at the left side of the upper neck region. It cut the left internal jugular vein.
(c) Deep incised wound measuring 9cm extending obliquely downwards from the left side of the upper neck anteriorly across the middle of the neck to the right side of the lower region. The incised wound was deeper laterally on the left side of the neck where it had incised into the left common carotid artery, bissected the left vagus nerve and penetrated posterior to the left trapezius muscle, which had been incised into at its medial border.
(d) Small bruise 2.5cm in diameter at the right upper anterior chest wall region just above the right breast.
(e) Deep incised wound measuring 13.5cm at the right lower anterior chest wall region and right upper abdominal wall region. This wound had incised into the right 6th intercostal muscle and part of the right 7th rib and had also incised into the surface of the right 7th and 8th costal cartillages.
(f) One stab wound just below the left breast at the region of the abdomen. This stab wound penetrated through the body and created an exit stab wound at the right side of the body. This wound penetrated the liver. The depth of the track from the entry to the exit stab wounds was about 19 to 21cm.
(g) Second stab wound at the left lateral chest wall region. It went through the stomach and terminated in the right anterior abdominal wall. The depth of the wound was about 18 to 20cm.
(h) Third stab wound at the posterior aspect of the left forearm.
(i) One defensive incised wound at the left index finger.
(j) A small bruise on the left breast.

The brutality of the killing is further shown in an examination of the photographs tendered at the preliminary inquiry.

There is also evidence that the accused had time to think before he opened the door of the room in which Poon and Cheong were and it was this thinking that led him to get a knife from the kitchen of the flat.

Having regard to all these factors, my initial inclination was to sentence him to life imprisonment but in view of the state of depression that he was described as suffering from, I decided that ten years was an appropriate sentence. Having regard to the violence involved, I was also of the view that an additional six strokes of the cane was warranted on the amended first charge.

As far as Cheong was concerned, the injuries were:

(a) Fractured skull with an overlying V-shaped 11cm scalp laceration.
(b) Three stab wounds deepening down to the muscles: (i) 9cm on the right shoulder region; (ii) 10cm right front of the chest; and (iii) 4cm left upper back region.
(c) Superficial incision on the following areas: (i) 1cm at the tip of the right index finger; (ii) 3cm left forearm; and (iii) 1cm left thumb.
(d) 6cm right armpit incision involving the triceps, radial nerve and bleeding profusely from the surrounding small vessels. The surgery to repair the various injuries lasted four hours and 55 minutes. Due to the right auxiliary incision, she still had persistent wrist drop, positive pointing finger sign and hand anaesthesia; requiring long-term management.

Section 308 of the Penal Code creates an offence which, where the victim had died, the offence would have been one under s 304. Each of paras (a) and (b) of s 304, refers to different and distinct states of an accused's mind. Notwithstanding the nature of the injuries, I gave the accused the benefit of treating him as having no intention to cause death or to cause such bodily injury as is likely to cause death as in para (a) of s 304. This is what led me to sentence him to three years' imprisonment on the amended second charge although the maximum provided under s 308 is seven years or a fine or with both. It should be noted that under s 308 if no injury is caused, the maximum imprisonment is three years.

Having regard to the nature of the injuries suffered by Cheong, I was of the view that three years was the appropriate sentence.

The next question I had to consider was whether the sentences should be concurrent or consecutive. The principles applicable in this context were the subject of consideration by Rajah J and me in the case of *Teo Heng Chye*[1] from p 209 (left D) to the end of the judgment. We were of the view that in the light of the two illustrations to s 71 of the Penal Code, where there was more than one victim of offences that constituted part of the same transaction, the accused was liable to one punishment in respect of one victim and *another* punishment in respect of the other victim. 'Another' in this context can only mean 'separate and distinct'. In our view, the use of the word 'another' in the second illustration to s 71 clearly implied a consecutive sentence. The use of

illustrations in legislation was fully considered by us in *Teo Heng Chye*'s case.[1]

The ultimate guiding principle for sentences in two or more offences is the totality of the sentences. (This principle and the relevant authorities are covered in *Teo Heng Chye*'s case.) I therefore asked myself whether in the light of all the facts of the case before me, the totality of 13 years' imprisonment was 'too much or not'.

Having regard to what I have already said, particularly on the nature of the injuries inflicted by the accused on the two helpless women alone in the flat and with no capacity for self-defence against a male flatmate armed with a knife, I came to the firm view that 13 years in total was appropriate to the facts before me and not too much. In coming to this conclusion, I took all factors into consideration, including the medical report of the psychiatrist and Poon's remark which may have angered him but was certainly not in the sense of provocation as a defence.

I cannot ignore the fact that it was a very brutal killing as can be seen from the photographs tendered at the preliminary inquiry and from the medical reports on the numerous injuries received by each, Poon and Cheong. I ordered the sentences to run consecutively.

Order accordingly.

Solicitors: Leo Fernando.

Reported by *S Surenthiraraj*

Public Prosecutor v Tan Joo Cheng & Ors

HIGH COURT (SINGAPORE) — CRIMINAL CASE NO 12 OF 1988
THEAN J AND CHAO HICK TIN JC
21 AUGUST 1990

Criminal Law — Murder — Stab wound inflicted in the course of robbery — Intention to cause injury — Test of intention — Penal Code (Cap 224, 1985 Ed), ss 34 & 300(c)

Criminal Law — Accomplice — Common intention — Participation in the act causing death of deceased — Penal Code (Cap 224, 1985 Ed), ss 34, 393 & 397

The three accused were charged for murder under s 302 read with s 34 of the Penal Code. The prosecution failed to make out a case of murder against the second accused; instead he pleaded guilty to an amended charge of attempted robbery.

The prosecution relied on the provisions of ss 300(c) and 34 against the other two accused. It was alleged that there was a common intention to commit robbery on the deceased and to use the knife to intimidate, counter or overcome any resistance put up by the deceased. It was in the course of overcoming this resistance that the first accused inflicted the fatal wound. The first accused's defence was that the stab wound was inflicted in the course of a struggle and that there was no intention on his part to stab the deceased.

Held, convicting the first accused of murder, and acquitting the third accused:

(1) The test in deciding whether the accused had the intention to inflict the injury is very broad — whether there was an intention to strike at a vital or dangerous part; whether there was an intention to strike with sufficient force. It is not necessary that the accused intended to cause the detailed injuries.

(2) The first accused had the intention to thrust the knife forward at the deceased in the region of the neck. He therefore had the necessary intention to cause a wound in the region of the neck and such an injury was inflicted.

(3) When the deceased was confronted, the third accused was not present, nor did he participate either actively or passively in the holding up of the deceased.

(4) For s 34 to apply, there must be some form of participation whether actively or passively in the act constituting the offence.

(5) As the third accused was not present and did not participate, he was acquitted of murder and convicted of attempted robbery.

[*Editorial Note*: The first accused has appealed to the Court of Criminal Appeal vide Criminal Appeal No 15 of 1990.]

Cases referred to

1 *Virsa Singh* v *State of Punjab* AIR 1958 SC 465 (folld)
2 *Mimi Wong* v *PP* [1972] 2 MLJ 75 (distd)
3 *PP* v *Neoh Bean Chye & Anor* [1975] 1 MLJ 3 (distd)
4 *Mahbub Singh* v *Emperor* AIR 1945 PC 118 (refd)
5 *Barendra Kumar Ghosh* v *Emperor* AIR 1925 PC 1 (refd)

Legislation referred to

Penal Code (Cap 224, 1985 Ed) ss 34, 300(c), 302, 393, 397

Ismail Hamid (Dy Senior State Counsel) for the Public Prosecutor.
Ronald Ng for the first accused.
S Rajagopal for the second accused.
Alan Wong for the third accused.

Cur Adv Vult

Thean J (delivering the judgment of the court): Initially when the trial commenced the charge against the three accused, Tan Joo Cheng, Ong Ah Lek and Luah Kang Hai, was as follows:

> You (1) Tan Joo Cheng
> (2) Ong Ah Lek
> (3) Luah Kang Hai
>
> are charged on or about the 14th day of February 1987 at about 2.41am at the 2nd storey of Block 241, Hougang Street 22, Singapore, and in furtherance of the common intention of you all, committed murder by causing the death of one Lee Juay Heng, and you have thereby committed an offence punishable under section 302 read with section 34 of the Penal Code (Cap 224).

We shall refer to the three accused as Joo Cheng, Ah Lek and Kang Hai respectively, and the deceased, Lee Juay Heng, as Lee.

Lee, prior to his death, lived with his wife, Madam Aw Seok Beng, at Block 241, Hougang Street 22,